

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION**

THREE ZERO THREE CAPITAL)
PARTNERS, LLC, on behalf of itself and)
303 Energy Trading Alliance, LLC)

Plaintiff)

v.)

WILLIAM JAMISON, JR., STEPHEN)
HARPER, JEFFREY ONG and EVERGREEN)
ENERGY CAPITAL, LLC)

Defendants.)

No. 08 C 248

Judge Blanche M. Manning
Magistrate Judge Arlander Keys

**DEFENDANT EVERGREEN ENERGY CAPITAL, LLC'S LOCAL RULE 56.1
STATEMENT OF MATERIAL FACTS IN SUPPORT OF ITS
MOTION FOR SUMMARY JUDGMENT**

In support of its Motion for Summary Judgment as to Count III of Plaintiffs' Verified Complaint at Law, and pursuant to Rule 56.1(a)(3) of the Local Rules of Civil Procedure for the Northern District of Illinois, defendant Evergreen Energy Capital, LLC by and through its undersigned attorneys, hereby submits the following statement of material facts as to which there is no genuine issue:

1. Evergreen Energy Capital, LLC ("Evergreen") is a Delaware limited liability company located in the State of Washington. William Jamison, Jr., Stephen Harper and Jeffrey Ong are the managing members of Evergreen. (*See* Affidavit of Stephen Harper ("Harper Aff.") at ¶¶2-3, attached as Exhibit A.)

2. Three Zero Three Capital Partners, LLC ("Three Zero Three") is an Illinois limited liability company with offices in Chicago, Illinois. Three Zero Three is the managing

member of 303 Energy Trading Alliance, LLC (the “Fund”), which is an Illinois limited liability company with offices in Chicago, Illinois. (*See* Verified Complaint at Law at ¶1.)

3. On July 1, 2006, Three Zero Three and Evergreen entered into a Trading Advisory Agreement in which Evergreen agreed to provide trading advisory services to the Fund. (*See* Harper Aff. at ¶4.)

4. When Evergreen began this relationship with Three Zero Three and the Fund, it did not have the telecommunications, computer and other equipment necessary to conduct its trading services on behalf of Three Zero Three and the Fund. (*See* Harper Aff. at ¶5.)

5. Accordingly, Three Zero Three offered to extend to Evergreen a line of credit for the principal amount of \$100,000 to allow Evergreen to purchase the equipment necessary to engage in trading on behalf of the Fund. (*See* Harper Aff. at ¶6.)

6. Therefore, on July 27, 2006, Evergreen executed a line of credit note (the “Note”) with Three Zero Three for the principal amount of \$100,000. (*See* Harper Aff. at ¶7; Line of Credit Note attached as Exhibit B.)

7. Stephen Harper, one of the principals, traders and members of Evergreen executed the Note on behalf of Evergreen. (*See* Harper Aff. at ¶7.)

8. Using the funds extended to it through the Note, Evergreen paid for operating expenses and purchased computer, telecommunications, and other equipment necessary to conduct trading advisory services for the Fund. (*See* Harper Aff. at ¶8.)

9. The Note was payable on demand. (*See* Note.)

10. In particular, the Note states that “the principal indebtedness evidenced hereby but unpaid thereon shall be payable within thirty (30) days of demand by Lender.” (*See* Note.)

11. On or about April 25, 2007, Evergreen repaid \$37,500 of the principal amount on the Note. (*See Harper Aff. at ¶9.*)

12. At this time, \$62,500 in principal remained on the Note. (*See Harper Aff. at ¶9.*)

13. Nevertheless, Three Zero Three never demanded that Evergreen repay the remaining principal in the amount of \$62,500. (*See Harper Aff. at ¶10.*)

Dated: January 18, 2008

Respectfully submitted,

EVERGREEN ENERGY CAPITAL, LLC

/s/ Amy J. Carletti

One of its attorneys

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CERTIFICATE OF SERVICE

I, Amy J. Carletti, certify that service of the above instrument was accomplished pursuant to ECF upon counsel of record for plaintiffs, who is a Filing User according to the Court's General Order On Electronic Filing and by first-class U.S. Mail, postage prepaid upon:

Richard T. Reibman
Schwartz Cooper Chartered
180 N. LaSalle Street, Suite 2700
Chicago, Illinois 60601

on this 18th day of January, 2008.

/s/ Amy J. Carletti

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